

As more fully explained in HMS's supporting brief, in concluding that HMS is "estopped from asserting attorney-client privilege," Doc. 87 at 36, Section III.I of the Memorandum misstates and misapplies the doctrine of judicial estoppel to the facts of this case. Contrary to the Memorandum's conclusion, the facts as to HMS do not support any of the elements that could give rise to judicial estoppel. *G-I Holdings, Inc. v. Reliance Ins. Co.*, 586 F.3d 247, 261-262 (3d Cir. 2009).

HMS's appeal is limited to Section III.I of the Memorandum and the associated documents the Order directs HMS to produce.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on March 2, 2021, I electronically filed the foregoing document with the Clerk of the Court for the United States Court District Court for the Middle District of Pennsylvania by using the ECF system. Pursuant to LR 5.7, participants in the case who are registered ECF users will be served by the ECF system.

/s/ Dennis A. Whitaker